



BUSINESS NAMES ACT 1996

No. 23 of 1996

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Carrying on business
5. Breach of Act does not avoid agreement, etc.
6. Agreement with ASC

PART 2 REGISTRATION OF BUSINESS NAMES

7. Certain business names to be registered
8. Registration or renewal of registration of business names
9. Priorities between applications
10. Expiry of registration
11. Register and inspection of register
12. Notification of changes in particulars
13. Commission may correct register

PART 3 CANCELLATION OR REINSTATEMENT OF REGISTRATION

14. Cancellation of registration
15. Reinstatement of registration

**PART 4
RIGHT OF APPEAL**

16. Right of appeal

**PART 5
OFFENCES**

17. Certain convicted offenders not to use business names
18. Use and exhibition of business name
19. Invitations to make deposits or loans
20. False or misleading statements
21. General offences and penalties
22. Offences committed by body corporate
23. Commencement of prosecutions

**PART 6
MISCELLANEOUS**

24. Signing of documents to be lodged with Commission
25. Statutory declaration
26. Power of court to require compliance with Act
27. Commission may waive or reduce fees
28. General power of exemption of Commission
29. Immunity from liability
30. Service
31. Service under any Act or rules and registered address for service
32. Evidentiary provision
33. Authority of Commission to destroy documents
34. Regulations

SCHEDULE
Repeal and Transitional Provisions



ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 23 of 1996

An Act to provide for the registration and use of business names; to repeal the Business Names Act 1963; and for other purposes.

[Assented to 2 May 1996]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Business Names Act 1996*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

"ASC" means the Australian Securities Commission established by the *Australian Securities Commission Act 1989* of the Commonwealth, as amended from time to time;

"ASCOT" means the national business names register established by ASC to which the Commission has access;

"body corporate" means a body corporate formed or incorporated within or outside this State and includes a foreign company within the meaning of the *Corporations Law*;

"business" includes trade and profession;

"business name" means a name, style, title or designation under which a business is carried on;

"Commission" means the Corporate Affairs Commission;

"director" of a body corporate includes a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called;

"**District Court**" means the Administrative and Disciplinary Division of the District Court;

"**family name**" means the surname or other part of a person's name that is not a Christian or given name;

"**initial**" includes a recognised abbreviation of a Christian or given name;

"**proprietor**" of a registered business name means the person or each of the persons (whether natural or incorporated) in relation to whom the business name is registered under this Act;

"**repealed Act**" means the *Business Names Act 1963*;

"**registered business name**" means a business name registered under this Act.

Carrying on business

4. (1) For the purposes of this Act, a person is not to be regarded as carrying on business in this State for the reason only that, within the State, the person—

- (a) is or becomes a party to a legal proceeding or effects settlement of such a proceeding or of a claim or dispute; or
- (b) maintains a bank account; or
- (c) effects a sale through an independent contractor; or
- (d) creates evidence of a debt or creates a charge on real or personal property; or
- (e) secures or collects any of the person's debts or enforces the person's rights in regard to securities relating to such debts; or
- (f) conducts an isolated transaction that is completed within a period of 31 days and that is not one of a number of similar transactions repeated from time to time; or
- (g) invests any of his or her funds or holds property.

(2) If a person causes an advertisement to be published in this State that contains—

- (a) a business name; and
- (b) an address in this State to which communications in respect of the business may be addressed or delivered,

the person will be taken to be carrying on business under that business name and at that address for the purposes of this Act.

Breach of Act does not avoid agreement, etc.

5. A contravention of or failure to comply with a provision of this Act does not of itself operate to avoid an agreement, transaction, act or matter.

Agreement with ASC

6. (1) The Commission may, with the approval of the Minister, from time to time make an agreement with ASC about any matter in relation to the administration of this Act.

(2) The agreement may contain delegations by the Commission of functions or powers under this Act.

(3) A delegation by the Commission for the purposes of the agreement—

- (a)** has effect subject to the conditions specified in the agreement; and
- (b)** may be varied or revoked by the Commission in accordance with the terms of the agreement; and
- (c)** does not prevent the Commission from acting in any matter.

PART 2
REGISTRATION OF BUSINESS NAMES

Certain business names to be registered

7. (1) A person must not carry on business in this State under a business name unless—

- (a) the business name consists of the name of the person; or
- (b) the business name is registered under this Act in relation to that person.

Maximum penalty: \$5 000.

(2) For the purposes of this section, the name of a person consists of—

- (a) in the case of a natural person—the person's full name or the family name together with at least the initials of the person's Christian or given names;
- (b) in the case of a body corporate—the full name of the body corporate.

(3) For the purposes of this section, a person does not carry on business under the person's name if the name is used with an addition other than—

- (a) the name of a person with whom he or she carries on the business in association; or
- (b) words indicating that the business is carried on in succession to a former owner of the business.

(4) This section does not prevent a person who is a trustee from carrying on a business in that capacity under another person's name or registered business name.

(5) If a person carries on a business under another person's registered business name as referred to in subsection (4), the person is to be taken to be the proprietor of that registered business name for the purposes of this Act.

(6) In this section—

"trustee" means—

- (a) a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law; or
- (b) an executor, administrator, guardian, committee, receiver or liquidator; or
- (c) a person—
 - (i) having or assuming the administration or control of any real or personal property affected by any express or implied trust; or
 - (ii) having the possession, control or management of real or personal property of a person who is under a legal or other disability; or
 - (iii) acting in any other fiduciary capacity.

Registration or renewal of registration of business names

8. (1) An application for registration or renewal of registration of a business name must—

- (a) be made to the Commission in the manner and form approved by the Commission; and
- (b) be signed—
 - (i) in the case of an application for registration—by each person proposing to carry on business under the business name; or
 - (ii) in the case of an application for renewal of registration—by the proprietor of the business name or, if there is more than one proprietor, by one or more of the proprietors; and
- (c) be lodged—
 - (i) in the case of an application for registration—not earlier than two months before the date shown in the application as the proposed date on which business will commence to be carried on under the business name; or
 - (ii) in the case of an application for renewal of registration—before or within two months after the date of expiry of the registration; and
- (d) be accompanied by the fee fixed by regulation and, in addition, in the case of an application for renewal lodged after the date of expiry, a late application fee fixed by regulation.

(2) An application will, for the purposes of this Act, be taken to be deficient and not to have been lodged with the Commission if—

- (a) it is incomplete or inaccurate in a material particular; or
- (b) the applicant fails to provide the Commission with any information or document required by the Commission for the purposes of determining the application; or
- (c) it is lodged outside the period allowed; or
- (d) the fee payable in respect of the application is not paid (whether because of the dishonouring of a cheque or otherwise).

(3) On receipt of a sufficient application for registration or renewal of registration, the Commission must—

- (a) register or renew the registration of the business name (as the case may require); and
- (b) issue a certificate of registration in such form as the Commission considers appropriate.

(4) However, the Commission—

- (a) must not, except with the consent of the Minister, register a business name—
 - (i) that appears to the Commission to be undesirable; or

- (ii) that is a name of a kind that the Minister has directed the Commission not to accept for registration;
- (b) must not, subject to any directions of the Minister, register a business name that is the same as, or that is, in the Commission's opinion, likely to be confused with or mistaken for—
 - (i) a registered business name; or
 - (ii) a business name the registration of which has expired during the preceding two months; or
 - (iii) the name of a body corporate;
- (c) must not register or renew the registration of a business name if the applicant (or one of the applicants) would, because of a conviction for an offence, be prohibited under Part 5 from carrying on business under that name.

(5) Any directions to the Commission under this section are to be given by the Minister by notice in the *Gazette*.

Priorities between applications

9. (1) If there are two or more applications for registration lodged in respect of the same business name or names that are, in the Commission's opinion, likely to be confused with or mistaken for each other, those applications are entitled to priority as between themselves according to the order in which they were lodged with the Commission.

(2) Nothing in this section affects the validity of the Commission's action where the Commission, in the normal course of dealing with applications—

- (a) refuses an application for registration of a business name because the business name is the same as, or is, in the Commission's opinion, likely to be confused with or mistaken for—
 - (i) a registered business name; or
 - (ii) a business name the registration of which has expired during the preceding two months; or
 - (iii) the name of a body corporate; and
- (b) registers the business name or a similar business name on an application by some other person lodged after the first mentioned application (the name then having become available for registration).

Expiry of registration

10. (1) Subject to this Act, the registration of a business name remains in force for three years from the date on which it is granted or renewed.

(2) The Commission must, unless an application for renewal has already been lodged, before or as soon as practicable after the date of expiry of the registration of a business name, give the proprietor of the registered business name written notice of the date of expiry of the registration.

Register and inspection of register

11. (1) For the purposes of this Act, the Commission must keep, in such form as it considers appropriate, a register of business names registered under this Act.

(2) The Commission may accept and register a notice lodged by or on behalf of the proprietor of a registered business (whether lodged before or after registration of the business name), in which event the notice is to be treated as forming part of the register.

(3) The register must include the following particulars in relation to each registered business name as provided by or on behalf of the proprietor of the business name:

- (a) a concise description of the true nature of the business carried on or proposed to be carried on under that name;
- (b) an address for service of the proprietor and the address of each place in this State at which the business is or is proposed to be carried on;
- (c) in the case of a proprietor who is a natural person—the full name, date of birth and residential address of the proprietor;
- (d) in the case of a proprietor that is a body corporate—the corporate name and the address of the registered office, or principal office, in the State of the body corporate.

(4) Subject to the regulations, a person may, on payment of a fee fixed by regulation—

- (a) inspect the register;
- (b) inspect a document lodged with the Commission under this Act or the repealed Act;
- (c) inspect ASCOT;
- (d) obtain from the Commission—
 - (i) a certificate of registration under this Act or the repealed Act;
 - (ii) a copy or certified copy of a part of the register or of a document lodged with the Commission under this Act or the repealed Act;
 - (iii) if the information held by the Commission enables the Commission to do so, a list of business names registered under this Act—
 - (A) on a particular day or within a particular period of time;
 - (B) by reference to the types of business carried on under those names;
 - (C) by reference to an area where the businesses are carried on;
 - (D) by reference to the person who carries on business under those names;
 - (iv) a copy or certified copy of information contained in ASCOT.

Notification of changes in particulars**12. (1) If—**

- (a) a business ceases to be carried on in this State under a registered business name; or
- (b) some other change occurs such that particulars contained in the register in relation to a registered business name as required under this Part are no longer accurate or complete,

the proprietor of the registered business name must, within 28 days of the change, give the Commission notice of the change in writing in the form approved by the Commission and signed by the proprietor.

(2) If there is more than one proprietor of a registered business name, it is sufficient if a notice under subsection (1) is signed by only one of the proprietors, but if the change required to be notified consists of the cessation of business or a person commencing or ceasing to carry on business under the registered business name, the notice must be signed by each proprietor (including each person commencing or ceasing to carry on business under the name).

(3) If the proprietor of a registered business name is a body corporate that is required by a law to give ASC notice of a change in particulars required under this Part, notice of the change given by the proprietor, within 28 days of the change, to ASC under that law will be taken to constitute compliance with the requirement to give the Commission notice of the change under subsection (1).

(4) A person must, in giving notice of a change for the purposes of this section, provide such particulars as are necessary to correct or supply the deficiency in the register.

(5) A person does not commit an offence against Part 2 by commencing to carry on business under a business name already registered under this Act (but not registered in relation to that person) if notice of the commencement is given in accordance with this section.

Commission may correct register

13. (1) The Commission may, on evidence that appears sufficient to it, correct an error or supply a deficiency in the register or in a certificate of registration issued under this Act.

(2) The Commission may accept and register a notice lodged by or on behalf of the proprietor of a registered business name to correct an error in, or to supply a particular omitted from, a notice previously lodged and registered and, in that event, the notice previously lodged and the notice lodged under this subsection must be read as one and are both to be treated as forming part of the register.

PART 3
CANCELLATION OR REINSTATEMENT OF REGISTRATION

Cancellation of registration

14. (1) If the Commission has reason to believe that the proprietor of a registered business name is not carrying on business in this State under the business name, the Commission may, by notice in writing served on the proprietor, invite the proprietor, within 28 days of the date of the notice, to show cause why the registration of the business name should not be cancelled.

(2) If the Commission has reason to believe that the proprietor of a registered business name has not given the Commission notice of a change in particulars in the register in relation to the business name as required under Part 2, the Commission may, by notice in writing served on the proprietor, require the proprietor, within 28 days of the date of the notice, to provide such particulars as are necessary to correct or supply the deficiency in the register.

(3) If, after notice has been served on a proprietor of a registered business name under subsection (1) or (2), the proprietor fails within the time allowed to show cause why the registration should not be cancelled or to provide any necessary particulars (as the case may be), the Commission may cancel the registration.

(4) If the Commission is satisfied that a business name has been registered on a deficient application or through some other mistake or inadvertence, the Commission may, by notice in writing served on the proprietor of the business name, cancel the registration of the business name for the reasons set out in the notice with effect from a date specified in the notice (being not less than 28 days from the date of the notice).

(5) If—

(a) the Commission is notified in writing by the proprietor of a registered business name that the proprietor has ceased to carry on business in this State under the business name and no other person has commenced to carry on business under that name; or

(b) in the case of a business name registered in relation to a body corporate—the body corporate has been dissolved,

the Commission may cancel the registration of the business name.

(6) The Commission must refund any fee paid in respect of the registration of a business name that is cancelled under subsection (4).

Reinstatement of registration

15. (1) If the Commission is satisfied that the registration of a business name has been cancelled as the result of an error on its part, the Commission may reinstate the registration of the business name and, in that event, the registration is to be taken to have continued in force without having been cancelled.

(2) If, in the case of a business name registered in relation to a body corporate, the Commission is satisfied that—

(a) the registration of the business name has been cancelled as the result of ASC having cancelled the registration of the body corporate; and

(b) ASC has reinstated the registration of the body corporate,

the Commission may reinstate the registration of the business name and, in that event, the registration is to be taken to have continued in force without having been cancelled.

**PART 4
RIGHT OF APPEAL**

Right of appeal

16. (1) Subject to this section, a person aggrieved by an act or decision of the Commission under this Act may appeal to the District Court against that decision.

(2) An appeal under this section must be lodged with the District Court within 21 days after the act or decision being appealed against.

(3) The District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be lodged within the period fixed by this section.

(4) On the hearing of an appeal under this section, the District Court may—

- (a) vary or reverse the decision of the Commission and make such consequential or ancillary orders as may be just in the circumstances; or
- (b) uphold the decision of the Commission and dismiss the appeal.

**PART 5
OFFENCES**

Certain convicted offenders not to use business names

17. (1) A person who has been convicted within or outside this State—

- (a) on an indictment of an offence in connection with the promotion, formation or management of a body corporate; or
- (b) of an offence involving fraud or dishonesty punishable by imprisonment for a period, or maximum period, of at least three months; or
- (c) of a prescribed offence against the *Companies (South Australia) Code* or the *Corporations Law*,

must not, within the period of five years after the conviction or, if the person was sentenced to imprisonment on such conviction, within the period of five years after release from prison—

- (d) commence (or recommence) to carry on business in this State under a business name; or
- (e) if the conviction occurred after the commencement of this section—continue to carry on business in this State under a business name,

unless—

- (f) the business name under which the person carries on business is not required to be registered under this Act; or
- (g) the person has obtained leave of the District Court to carry on business under the business name.

Maximum penalty: \$5 000.

(2) A person who intends to make an application for leave of the District Court under this section must give the Commission at least 28 days' notice of the proposed application.

(3) The Commission may be represented and heard at the hearing of an application under this section.

(4) When granting leave under this section, the District Court may impose such conditions or limitations as it thinks fit and any person contravening or failing to comply with any such condition or limitation is guilty of an offence.

Maximum penalty: \$5 000.

Use and exhibition of business name

18. A person carrying on business in this State under a registered business name must display the registered business name—

- (a) prominently on any document relating to the carrying on of the business; and

- (b) in a conspicuous position on the outside of each place at which business is carried on under that name.

Maximum penalty: \$750.

Expiation Fee: \$160.

Invitations to make deposits or loans

19. (1) A person must not, in connection with an invitation to lend or deposit money made by an advertisement or otherwise to the public or a person as a member of the public, use or refer to a business name that—

- (a) is registered or required to be registered under this Act; or
- (b) would, if business were carried on in this State under the business name, be required to be registered under this Act.

Maximum penalty: \$5 000.

(2) This section does not apply—

- (a) to an invitation by a public corporation within the meaning of the *Corporations Law* made in accordance with the provisions of the *Corporations Law*; or
- (b) to an invitation made to a person whose ordinary business is to lend money.

False or misleading statements

20. A person must not, in giving information under this Act, make a statement that is false or misleading in a material particular.

Maximum penalty: \$5 000.

General offences and penalties

21. (1) If a person contravenes or fails to comply with a provision of this Act for which no penalty is specifically provided, the person is guilty of an offence.

Maximum penalty: \$1 250.

Expiation Fee: \$210.

(2) If a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, the person is guilty of a further offence and liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.

(3) For the purposes of subsection (2), an obligation to do something is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

Offences committed by body corporate

22. If a body corporate commits an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is applicable to the principal offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of that offence.

Commencement of prosecutions

23. (1) A prosecution for an offence against this Act cannot be commenced except by—

- (a) the Commission; or
- (b) a person authorised in writing by the Commission.

(2) In proceedings for an offence against this Act, an allegation in the complaint that the complainant is a person authorised in writing by the Commission to commence the prosecution is to be accepted, in the absence of proof to the contrary, as proved.

**PART 6
MISCELLANEOUS**

Signing of documents to be lodged with Commission

24. (1) A document lodged with the Commission will be taken to have been signed by a person required to sign the document if—

- (a) in the case of a natural person—the document is signed by another authorised by the person in writing to sign on the person's behalf;
- (b) in the case of a body corporate—the document is signed by a director of the body corporate or a person authorised by a director in writing to sign on behalf of the body corporate.

(2) A person must, if required by the Commission, produce the written authorisation to the Commission.

(3) If the Commission is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a document, the Commission may accept the document for registration without it being signed.

(4) Subsection (3) does not operate to relieve a person from a requirement to sign a document and a document not signed by a person is not, by reason only of its registration under this Act, evidence relating to that person's interest in a business.

Statutory declaration

25. The Commission may, if it thinks fit, require a document lodged with the Commission under this Act to be verified by a statutory declaration made by the person who signed the document and, if it is not so verified, the document will be taken not to have been lodged with the Commission.

Power of court to require compliance with Act

26. (1) If a person carrying on business under a business name is in default under this Act and commences any suit or action in that business name or in respect of a cause of action arising out of any dealing under that business name, the court before which the suit or action is commenced may order the person to make good the default and—

- (a) may stay all proceedings in the suit or action until the order is complied with; or
- (b) may allow the proceedings to be continued on an undertaking being given by the person that he or she will comply with the order within such time as is fixed by the court.

(2) A person who contravenes or fails to comply with an order under this section is guilty of an offence.

Maximum penalty: \$5 000.

Commission may waive or reduce fees

27. The Commission may, in its discretion—

- (a) waive or reduce, in a particular case or class of cases, fees that would otherwise be payable under this Act;

- (b) refund, in whole or in part, in a particular case or class of cases, fees payable under this Act.

General power of exemption of Commission

28. (1) The Commission may, if it thinks fit—

- (a) extend any limitation of time prescribed by or under this Act whether or not the prescribed period has expired; or
- (b) exempt a person from the obligation to comply with any provision of this Act.

(2) An extension or exemption under subsection (1) may be granted by the Commission on such conditions as it thinks fit.

(3) A person must not contravene or fail to comply with a condition imposed by the Commission under subsection (2).

(4) The Commission may, at any time by instrument in writing, revoke or vary an extension or exemption under subsection (1).

Immunity from liability

29. (1) A person engaged in the administration or enforcement of this Act incurs no liability for an honest act or omission in the exercise or discharge or purported exercise or discharge of a power, duty or function under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies against the Crown.

Service

30. A notice required or authorised by this Act to be served on a person may be served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) in the case of a notice to be served on a proprietor of a registered business name—by posting it to the person, or leaving it for the person with someone apparently over the age of 16 years, at the address registered as the address for service of the proprietor; or
- (c) by posting it to the person or agent of the person at his or her last known address; or
- (d) by transmitting it by facsimile transmission to a facsimile number provided by that person for that purpose.

Service under any Act or rules and registered address for service

31. If—

- (a) under an Act or rules of court any notice, process or other document is required or authorised to be served on a person by posting or delivering it to or leaving it at some place of business or other place or address; and
- (b) the person is a proprietor of a registered business name,

then service of the notice, process or other document by that means to or at the address registered under this Act as the address for service of the proprietor of the business name is to be taken to be sufficient service on the person for the purposes of that Act or those rules.

Evidentiary provision

32. (1) An apparently genuine document purporting to be under the seal of the Commission and to be certifying—

- (a) that a business name was or was not registered under this Act or the repealed Act at a specified date; or
- (b) as to any matter contained in the register under this Act or the repealed Act,

is to be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

(2) An apparently genuine document purporting to be a copy of a document lodged with the Commission under this Act or the repealed Act and to be certified by the Commission as a true copy of the document is to be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of the document.

Authority of Commission to destroy documents

33. Subject to Part III of the *Libraries Act 1982*, the Commission may, if in its opinion it is no longer necessary to retain them, dispose of documents lodged or records kept under this Act or the repealed Act where the registration of the business name in respect of which the documents were lodged or the records kept has not been in force at any time during the preceding six years.

Regulations

34. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) fix and provide for the payment of fees (including fees for the late lodging of documents) to be paid by any person under this Act; and
- (b) fix a fine, not exceeding \$2 500, for contravention of the regulations.

SCHEDULE
Repeal and Transitional Provisions

1. The *Business Names Act 1963* is repealed.

2. A business name registered under the repealed Act immediately before the commencement of this Act is to be taken to be registered under this Act and the provisions of this Act apply in relation to that business name accordingly.

3. The register kept under the repealed Act continues as the register under this Act subject to the provisions of this Act.

4. If an application for the registration of a business name was made under the repealed Act, but the business name had not, as at the commencement of this Act, been registered—

- (a) the proceedings for registration of the business name may be continued and completed under the repealed Act as if this Act had not been enacted;
- (b) on completion of those proceedings, the business name is to be taken to have been registered under this Act.

5. The *Acts Interpretation Act 1915* applies, except to the extent of any inconsistency with the provisions of this schedule, to the repeal of the *Business Names Act 1963*.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor